



PUBLIC NOTICE

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General Counsel Modifies *Ex Parte* Rules For 800 MHz Transition Administrator

Summary. By this Public Notice, we modify the *ex parte* rules, pursuant to Section 1.1200(a) of the Commission's rules, to exempt the 800 MHz Transition Administrator from the *ex parte* requirements with respect to presentations to the Commission and its staff regarding the 800 MHz reconfiguration.

Background. On August 6, 2004, the Commission released the *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, FCC 04-168 (800 MHz Public Safety Order or Order) to address the public safety interference problem in the 800 MHz band.¹ Among other things, the 800 MHz Order reconfigures the 800 MHz band to address the root cause of interference by separating out generally incompatible technologies.² The Order provided that the relocation process would be managed by an independent Transition Administrator, who would be subject to oversight by the Commission.³ The Order noted that the Commission had used similar third-party solutions in the past when it appointed an independent, non-government entity (UTAM) to oversee the transition from fixed microwave operations to UPCS in 1994 and when it appointed two private non-governmental entities (the Personal Communications Industry Association and the Industrial Telecommunications Association, Inc.) to administer the microwave clearinghouse cost-sharing plan in 1996.⁴

The Order directed that the Transition Administrator be selected by a committee representative of 800 MHz licensees.⁵ On October 12, 2004, the Search Committee sent a letter to the Chief of the Public Safety and Critical Infrastructure Division stating that it had selected a three-organization team to serve as the Transition Administrator, consisting of BearingPoint,

¹Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket 02-55, 19 FCC Rcd 14, 969 (2004).

²*Id.* at 19 FCC Rcd 14973, ¶3.

³*Id.* at 19 FCC Rcd 15070, ¶191.

⁴*Id.* at 15070, ¶191, n. 509.

⁵*Id.*

Squire-Sanders-Dempsey LLP, and Baseline Telecom, Inc. (Bearing Point Team.).⁶ On October 29, 2004, the Wireless Telecommunications Bureau concurred in the selection of the BearingPoint Team as the Transition Administrator.⁷

On December 8, 2004, the Transition Administrator requested that the Commission exempt the 800 MHz Transition Administrator from the *ex parte* requirements with respect to presentations to the Commission and its staff regarding the 800 MHz reconfiguration.⁸ He stated that “[s]uch an exemption would serve the public interest by facilitating open communications with the Commission and thereby potentially expediting the reconfiguration process.”⁹ He further stated that he would “likely need to confer with the Commission staff on matters that are subject to arbitration, investigation or litigation” and that “[i]t would be appropriate for these deliberations to take place on an undisclosed basis.”¹⁰ The Transition Administration also noted that the Commission’s rules exempt other private administrators from *ex parte* requirements for certain presentations, including the administrator of the interstate telecommunications relay services fund; the North American Numbering Plan Administrator; the North American Numbering Plan Billing and Collection Agent; the Universal Service Administrative Company; and the Number Portability Administrator.¹¹ In addition, he noted that “[t]he Commission’s rules also exempt presentations made by members of advisory coordinating committees with respect to the coordination of frequency assignments to stations in the private land mobile services or fixed services,” and that these rules would have been applicable to the private administrators who facilitated band reconfigurations in the past, including UTAM, the Personal Communications Industry Association, and the Industrial Telecommunications Association, Inc.¹² Finally, the Transition Administrator stated that he was “an independent party with no financial interests in any 800 MHz licensee, [and, t]herefore, an exemption from the Commission’s *ex parte* rules would not prejudice any party.”¹³

Discussion. Section 1.1200(a) of the Commission’s rules provides that “[w]here the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.”¹⁴ We find that the Transition Administrator has shown that the public interest will be served by modifying the *ex parte* rules in the 800 MHz proceeding. We agree that exempting the 800 MHz Transition Administrator from the *ex parte* requirements with respect to presentations to the Commission and its staff regarding the 800 MHz reconfiguration will facilitate open communications between the Transition Administrator and the Commission and potentially expedite the reconfiguration

⁶ See Letter from Transition Administrator Search Committee to Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, dated Oct. 12, 2004. The Search Committee’s web site: <http://www.tasc.utc.org> contains additional information concerning the Selection Committee’s selection process.

⁷ See Wireless Telecommunications Bureau Concurs With Search Committee Selection of a Transition Administrator, WT Docket 02-55, Public Notice, DA 04-3492, (WTB) (rel. Oct. 29, 2004).

⁸ See Letter from Robert B. Kelly, Squire, Sanders, & Dempsey, L.L.P. to John Rogovin, General Counsel, dated December 8, 2004.

⁹ *Id.* at 1.

¹⁰ *Id.*

¹¹ *Id.* at 1-2.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ 47 C.F.R. § 1.1200(a).

process. We also believe that it is desirable to allow the Transition Administrator and the Commission to deliberate on matters that are subject to arbitration, investigation or litigation on an undisclosed basis. In short, we find that the considerations that led us to exempt other third party administrators from the *ex parte* rules for certain presentations are applicable here. Furthermore, we find that an exemption from the *ex parte* rules here would not prejudice any party, as the 800 MHz Transition Administrator is an independent party with no financial interest in any 800 MHz licensee. Accordingly, pursuant to Section 1.1200(a) of the Commission's rules, we hereby exempt the 800 MHz Transition Administrator from the *ex parte* requirements with respect to presentations to the Commission and its staff regarding the 800 MHz reconfiguration.

Action by the General Counsel.